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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,157	02/20/2004	Laurent Denoue	FX/A3006	1879
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FLIESLER MEYER LLP 650 CALIFORNIA STREET 14TH FLOOR SAN FRANCISCO, CA 94108			EXAMINER KASSA, YOSEF	
			ART UNIT 2624	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/783,157

Applicant(s)

DENOUE ET AL.

Examiner

YOSEF KASSA

Art Unit

2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 6-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 6-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Arguments

1. Applicant's arguments see the remark on page 7-12, filed on 11/26/2007, with respect to rejections of claims 1 and 6-32 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground of rejection is made on De Bonet (U.S. Patent 5,852,823), and further in view of Rosenberg et al (U.S. Patent 6,947,162).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 and 6-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Bonet (U.S. Patent 5,852,823), and further in view of Rosenberg et al (U.S. Patent 6,947,162).

Regard to claim 1, De Bonet disclosed receiving at least one search result (refer to col. 6, lines 1-11, user supplies query images), the search result comprising an image (refer to col. 6, lines 12-16, query images), wherein the image includes an original rank (refer to Fig. 1, items 12-18), the original rank based on the relevance of the image within the search result (refer to col. 6, lines 52-56, that is, image similarity measured on rank ordered);

determining a usability of the (converted) image according to visual characteristics of the (converted) image (refer to col. 6, lines 4-11, assessment of visual similarity using a substantial number of different predefined visual characteristics of the query images); and

assigning a new rank to the search result in response to the usability of the (converted) image (refer to col. 7, lines 6-9, reads on updating to new query image). De Bonet does not disclose expressly for converting the image to a modifiable format. However, at the same field of endeavor, Rosenberg discloses this feature (refer to col. 9, lines 4-15). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to incorporate the teaching Rosenberg image format converting system into De Bonet system. The suggestion/motivation for doing so would have been to provide the process of converting specific format for specific object group of the enhanced image data (refer to col. 9, lines 7-10 of Rosenberg). Therefore, it would have been obvious to combine Rosenberg with De Bonet to obtain the invention as specified in claim 1.

Regard to claim 6, De Bonet disclosed wherein the usability comprises a similarity to previously acquired images (refer to col. 7, lines 23-30).

Regard to claim 7, De Bonet disclosed wherein the usability comprises an ease of modification for the converted image (refer to col. 7, lines 38-44).

Regard to claim 8, De Bonet disclosed wherein the usability comprises a similarity to an image style (refer to col. 7, lines 26-30).

Claim 9 is similarly analyzed and rejected the same as claim 1.

Regard to claim 10, De Bonet disclosed wherein the instructions for determining a usability comprise instructions for determining a number of edges for the image (refer to col. 15,

lines 59-66).

Regard to claim 11 De Bonet disclosed wherein the instructions for determining a usability comprise instructions for determining a number of segments for the image (refer to col. 15, lines 66-col. 16, lines 5, reads on selecting horizontal lines, vertical lines and diagonal lines image).

Regard to claim 12, De Bonet disclosed wherein the instructions for determining a usability comprise instructions for determining a number of colors for the image (refer to col. 10, lines 8-16).

Regard to claim 13, De Bonet disclosed wherein the instructions for determining a usability comprise instructions for determining a file format for the image (refer to col. 10, lines 30-39).

Regard to claim 14, De Bonet disclosed wherein the instructions for determining a usability comprise instructions for determining a number of intensity peaks for the image (refer to col. 9, lines 38-41, reads on the process of determining high and low characteristic of the image).

Regard to claim 15, De Bonet disclosed wherein the usability comprises an ease of modification for the image (refer to col. 9, lines 29-37 and also refer to Fig. 1, item 20).

Claims 24-26 are similarly analyzed and rejected the same as claims 6-8.

Claim 16 is similarly analyzed and rejected the same as claim 8.

Claim 17 is similarly analyzed and rejected the same as claim 1.

Claims 18-23 are similarly analyzed and rejected the same as claims 10-14.

Claims 24-26 are similarly analyzed and rejected the same as claims 6-8.

Regard to claim 27, De Bonet disclosed determining line segments within the image (refer to Fig. 1, item 20); and

converting the image to a vector based format, wherein each image is represented as a plurality of vectors, the vectors representing the line segments of the image (refer to col. 9, lines 29-37).

Regard to claim 28, De Bonet disclosed wherein determining a usability comprises applying a weighted analysis, said weighted analysis includes determining an ease of modification for the converted image and comparing the ease of modification to the original rank of the image (refer to col. 4, lines 46-62).

Claims 29-32 are similarly analyzed and rejected the same as claims 10-14.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir.

1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and Warmerdam, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claims 9-16 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claims 9-16 defines a “a computer program product....” embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., “When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized” – Guidelines Annex IV). That is, the scope of the presently claimed “a computer program product” can range from paper on which the program is written, to a program simply contemplated and memorized by a person. The examiner suggests amending the claim to embody the program on “a computer program stored on a computer-readable medium....” or equivalent in order to make the claim

statutory. Any amendment to the claim should be commensurate with its corresponding disclosure.

Other Prior Art Cited

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. (6199060), (6167405), (6161107) and (5907704).

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to YOSEF KASSA whose telephone number is (571) 272-7452. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Werner can be reached on (571) 272-7401. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communication and (571) 273-8300 for after Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the customer service office whose telephone number is (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

02/06/2008.

YOSEF KASSA
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Y. Kassa', written over the printed name and title.